FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAY 23 2005

OFFICE OF
MANAGING DIRECTOR

Gerald Musarra, Vice President
Trade and Regulatory Affairs
Washington Operations
Lockheed Martin Corporation
1725 Jefferson Davis Highway
Suite 403
Arlington, VA 22202

Re: Request of Lockheed Martin Corporation for
Refund of Application Fee in Connection with
Withdrawn V-Band Satellite Applications
Fee Control No. 9709298210183001

Dear Mr. Musarra:

This is in response to your request for a refund of Lockheed Martin Corporation's ("Lockheed Martin") filing fees of $765,405.[1] These fees were paid in connection with Lockheed Martin's applications for authority to launch and operate nine geostationary ("GSO") fixed-satellite service ("FSS") and broadcasting-satellite service ("BSS") satellites in the 39.5-42.5 GHz band and the 47.2-50.2 GHz band (the "V-band applications"), filed September 25, 1997, in response to the announcement of a processing round in 1997. Lockheed Martin withdrew its V-band applications in September 2002.[2]

In your letter, you state that Section 1.1113(a)(4) of the Commission's rules requires the requested refund.[3] This rule states in relevant part that "[t]he full amount of any fee will be returned or refunded . . . when the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application." 47 CFR Section 1.1113(a)(4). You submit that "the domestic and international decisions regarding spectrum use by non-government V-band satellites that have been taken and/or proposed since Lockheed Martin filed its applications in 1997 have nullified its applications as filed, and justify a refund of the associated filing fees."[4] Specifically, as amplified in a supplemental presentation to Commission staff on March 12, 2004, you allege that with the resolution of the V-band allocation rulemaking proceeding in 2003, one-third less FSS spectrum

[1] Letter from Gerald Musarra, Vice President, Trade and Regulatory Affairs, Washington Operations, Lockheed Martin Corporation to Andrew S. Fishel (September 13, 2002) (LM Letter).
[2] Lockheed Martin's request for refund was filed on September 13, 2002, concurrently with its request for dismissal of its V-band GSO applications.
[3] LM Letter at 3.
[4] *Id.*

will be available for regular use than when Lockheed Martin filed its application.[5] In your 2004 supplement, you also state that resolution of band sharing issues between GSO and NGSO FSS systems, which is likely to reduce further the utility of the bands for GSO FSS, has not even begun.[6] In addition, you assert that even if authority were granted at the time Lockheed Martin surrendered its applications, the remaining 15 months before expiration of the initial ITU deadline for bringing frequency assignments for satellite systems into use would have been insufficient to permit implementation.[7] Furthermore, you state that "it is axiomatic that application fees are intended to recover the costs associated with processing applications," and that there can be no justification for not granting a request to refund a filing fee paid expressly to process applications, where the set of applications has not even begun to have been acted upon.[8] Finally, you state that public policy considerations support grant of the refund request, since "the fewer applications there are for the Commission to address and resolve, the more rapidly it can issue licenses and allow the applicants" to go forward.[9]

Section 1.1113(a)(4) provides that the Commission will issue refunds for application fees "when the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application ." In establishing the fee collection program, the Commission elaborated on the meaning of this provision:

> Section 1.1111(a)(4) [the earlier version of Section 1.1113(a)(4)] is intended to apply in those rare instances where the Commission creates a new regulation or policy, or the Congress and President approve a new law or treaty, that would make the grant of a pending application a *legal nullity*. We believe that this rare event would justify the return of an application because the action of a government entity would make the requested action *impossible* without regard to the merits of that application.

Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd. 947, para. 17 (1987) (*1987 Fee Order*) (*emphases added*). *See also Ranger Cellular and Miller Communications, Inc.*, 348 F.3d 1044 (D.C. Cir. 2003), (upholding a Wireless Telecommunications Bureau decision citing this language).

We disagree that actions taken by the Commission or ITU are significant enough to trigger Rule 1.1113(a)(4), so as to warrant a fee refund. To begin with, Lockheed Martin was well aware when it filed its applications in 1997 that the amount of FSS spectrum available for its use could change,[10] and that band sharing issues between GSO

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[5] Presentation of Lockheed Martin Corporation in Support of Request for Fee Refund, p. 10 (March 12, 2004) (LM Presentation).

[6] *Id.*

[7] *Id.* at 3 and 10; LM Letter at 2-3.

[8] LM Letter at 4-5.

[9] LM Letter at 5.

[10] In particular, Lockheed Martin has no basis to complain that the Commission allocated only 4 GHz of spectrum in the V-band to FSS, rather than the 6 GHz Lockheed Martin requested in its application. *See* LM Presentation at 10. This is because the Commission explicitly proposed allocating only 4 GHz to FSS in the *NPRM* it adopted in March 1997, about six months before Lockheed Martin filed its application. *See* Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in

and NGSO FSS systems would have to be resolved.[11] Under the satellite licensing procedure that the Commission used before it adopted the First Space Station Licensing *Reform Order* in May 2003,[12] satellite license applicants seeking to provide new services in unauthorized bands traditionally filed their applications before the establishment of an ITU or domestic allocation for the service in the frequency band for which they were seeking authorization and before the Commission adopted service or sharing rules for that service. This procedure enhanced the United States' ability to demonstrate demand for the spectrum and the Commission's ability to advocate U.S. positions and obtain the ITU satellite frequency allocations sought by applicants. Obtaining the ITU allocation, and then completing the rulemaking proceedings to adopt the domestic allocation and service rules, would often take years. For example, for the V-band spectrum, the ITU adopted the allocation in 2000, and modified it in 2003. Therefore, we do not believe that these factors alone support the grant of refunds.[13]

Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 Frequency Band; Allocation of Spectrum in the 46.9-47.0 Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 Frequency Band for Government Operations, *Notice of Proposed Rulemaking*, 12 FCC Rcd 10130, 10136-37 (para. 14) (1997) (40 GHz *NPRM)*. Thus here there was no rule change that could have conceivably triggered Rule 1.1113(a)(4). Moreover, the facts here are completely distinguishable from those in the *Private Land Mobile Order* you cite in which the Commission specifically found Rule 1.1111(a)(4) applicable when it amended its rules to impose stricter entry requirements on a subset of licensees in the 200 MHz band. *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Service*, 8 FCC Rcd 4161, 4164 at n.28 (1993).

[11] In 1997, Lockheed Martin could have fairly anticipated that GSO and NGSO FSS systems might have to share spectrum in the V-band. Indeed, Lockheed Martin specifically argued against a Commission proposal in the 40 GHz proceeding to designate separate spectrum for GSO/FSS and NGSO/FSS systems. In comments filed in May 1997, it argued that "[a]ll realistic sharing possibilities should be explored, and even when the details are currently unproved, care should be taken not to foreclose preemptively opportunities for co-frequency operation..... Similarly, Lockheed Martin also believes it is premature for the Commission to segment FSS spectrum between GSO and NGSO. For example, in the ITU-R Study Groups and in the CPM process, the US has supported the continuous examination of possible sharing scenarios ...between GSO and NGSO FSS...." *See Comments of Lockheed Martin Corporation*, IB Docket No. 97-95, p. 13 (May 5, 1997). The Commission subsequently agreed with Lockheed Martin and other satellite industry commenters and did not provide for separate GSO and NGSO FSS designations. *See* 40 GHz, *Report and Order*, 13 FCC Rcd. 24649, 24662, para. 21 (1998).

[12] Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10,760 (2003). In the *First Space Station Licensing Reform Order*, the Commission announced that it would no longer accept satellite license applications filed before the ITU adopted a needed frequency allocation for the proposed service. The Commission stated it would return such applications as premature. The Commission also observed that parties can file petitions for rulemaking to amend the Table of Frequency Allocations instead of premature license applications to demonstrate the need for a new frequency allocation. *Id.* at 10809, para. 124.

[13] Lockheed Martin's assertion in its supplemental presentation in March 2004 that the resolution of the GSO/NGSO band sharing issues had not even begun (*see* LM Presentation at 10) was not correct. In the *First Space Station Licensing Reform Order*, the Commission explained how it would process GSO and NGSO satellite applications filed in the same frequency band at the same time. *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10786-77 (para. 58). Later, the International Bureau discussed in detail how those procedures apply to the then-pending GSO and NGSO V-band satellite applications. International Bureau Invites Applicants to Amend Pending V-Band Applications, *Public Notice*, 19 FCC Rcd 1531 (Int'l Bur. 2004).

We also do not find the fact that the ITU imposed a "bringing into use" deadline of November 2003 (with possible three-year extension) to maintain the priority of United States frequency assignments in the V-band compels us to grant Lockheed Martin a refund. Applicants were aware that such deadlines were standard procedure, and that the United States had the ability to extend the deadline. Indeed, in October 2003, the United States requested the ITU to extend the bringing into use dates for all V-band filings until April-October 2007.[14]

We also disagree with your assertion that "the extent to which the Commission processes an application has a direct bearing on whether an application refund is warranted."[15] Application fees are generally intended to represent the average cost of application processing services rather than individually-determined costs. *See 1987 Fee Order*, para. 13 ("Because the Commission incurs a cost regardless of the final result to the applicant, we proposed to Congress [and Congress agreed] that these fixed processing costs should be recovered in equal amounts from each applicant through fees. We can find no justification in the statute or the legislative history for apportioning fees according to the actual work done on any particular application"). The Commission has subsequently reaffirmed this principle. *See PanAmSat Corp.*, 19 FCC Rcd 18,495, paras. 5 and 7 (2004) and *Lockheed Martin Corp.*, 16 FCC Rcd 12805, 12807, para. 5 (2001). In *PanAmSat*, the Commission reiterated "there is 'no justification in the statute or legislative history for apportioning fees in accordance with the actual work done on any particular application'"[16] and further stated that "[i]nsofar as language in the cited OMD rulings suggests that fee relief may be based on any reduced processing burdens, we clarify that consistent with congressional intent and established agency precedent, good cause for fee waiver or deferral requires a showing of compelling and extraordinary circumstances."[17] Thus, Congress and the Commission have made clear that the existence of "compelling and extraordinary circumstances" -- not the amount of resources expended in an individual case – should be the touchstone for determining whether a fee refund should be granted.

We do not agree that the Multiple Address Systems (MAS) proceeding you cite[18] provides support for your assertion that a refund should be granted to Lockheed Martin in the instant case. In the MAS *Order*, the Chief of the Public Safety and Private Wireless Division in the Wireless Telecommunications Bureau was "unambiguously compelled" to dismiss the pending MAS applications (and allow applicants to file for a refund of their filing fees) because the MAS applications "were filed in anticipation of the awarding of these licenses through ... lottery," and the Balanced Budget Act of 1997 terminated the Commission's authority to use lotteries to select among mutually exclusive applications.[19] In *Cellular Order*, which you also cite, the Commission made

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[14] *See* Memorandum to Oleg Efremov, Radiocommunication Bureau, ITU from Jeree Payton, International Bureau, FCC (October 31, 2003). The Commission anticipates that the ITU will grant these requests in the near future. *See* E-mail to Kal Krautkramer, International Bureau, FCC, from Yvon Henri, Radiocommunication Bureau (May 26, 2004).

[15] LM Letter at 4.

[16] PanAmSat Corp., *citing* Lockheed Martin Corp., 16 FCC Rcd. at 12807, para. 5 and 1987 Fee Order, 2 FCC Rcd at 949.

[17] *Id.* at para. 8.

[18] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Order*, 13 FCC Rcd. 17954 (1998).

[19] *Id.* at paras. 1 and 6, *cited in* Certain Cellular Rural Service Area Applications, *Order*, 14 FCC Rcd. 4619, 4621, n.14 (1999) (*Cellular Order*).

clear that the fact that the Balanced Budget Act terminated the Commission's authority to use lotteries to select among mutually exclusive applicants did not mean that the applicants would be eligible for a refund in all cases:

> [T]hese [cellular rural service area] applicants do not qualify for refunds of their filing fees. Not only were their applications accepted for filing under our lottery rules, but the applicants actually participated in the initial lotteries for their respective markets, giving them a full opportunity to be selected. Having received this opportunity, applicants who were unsuccessful in the initial lottery are not entitled to a refund based on the happenstance that the initial winner was disqualified and no second lottery was conducted.[20]

Thus, the *MAS Order* and *Cellular Order* read together stand for the proposition that "compelling" circumstances -- such as the Balanced Budget Act's requirement terminating the Commission's lottery authority -- are a necessary prerequisite to triggering Rule 1.1113(a)(4). Here, there are no sufficiently "compelling" circumstances such as a change of law which completely terminates the Commission's authority to process the pending applications.

Moreover, the Commission has clearly expended resources processing the V-band applications. All of the V-band applications underwent a preliminary review. The Commission also filed "advance publications" with the ITU, informing it that U.S. Satellite operators were planning to launch satellites to particular orbit locations. In addition, the Commission provided the ITU with Requests for Coordination, which gives the U.S. applicant priority over applicants from other countries that file their coordination requests after the Commission files its information. Furthermore, the Commission has participated in international coordination activities to protect these filings on an ongoing basis.

Finally, we disagree with your assertion that "important public policy considerations support grant of the instant refund request [because] ... the fewer applications there are for the Commission to address and resolve, the more rapidly it can issue licenses and allow applicants to move forward..."[21] First, Lockheed Martin has already withdrawn its applications, and so our refund decision here has no bearing on the number of pending v-band applications. Second, making it easier for applicants to receive refunds could well have the unintended or undesirable consequence of greatly increasing the number of pending applications to resolve, since applicants would have an incentive to file speculative applications if they could withdraw such applications and still receive a refund.

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[20] *Cellular Order*, 14 FCC Rcd. at 4621, para. 6.
[21] LM Letter at 5.

In sum, you have not demonstrated that either Rule 1.1113(a)(4) or other public policy considerations support the grant of your refund request. Accordingly, we deny your request. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark A. Reger
Chief Financial Officer

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RETURN

LOCKHEED MARTIN

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Gerald Musarra
Vice President, Trade and Regulatory Affairs
Washington Operations

September 13, 2002

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request of Lockheed Martin Corporation for Refund of Application Fee in Connection with the Voluntary Dismissal of Unprocessed V-Band Satellite Applications (File Nos. SAT-LOA-19970925-0100 through 0108)

Dear Mr. Fishel:

In this letter, Lockheed Martin Corporation ("Lockheed Martin") requests a refund of the $765,405 application fee that Lockheed Martin paid in connection with its applications for authority to launch and operate nine geostationary ("GSO") fixed-satellite service ("FSS") and broadcasting-satellite service ("BSS") satellites in the 39.5-42.5 GHz band and the 47.2-50.2 GHz band (the "V-band applications"). This request is being filed concurrently with Lockheed Martin's dismissal as a matter of right of its heretofore unprocessed V-band GSO applications. A copy of the request for dismissal is enclosed herewith.

The issuance in full of the requested refund is entirely consistent with the Commission's rules and policies regarding the refund of filing fees. As an initial matter, the Commission has not incurred processing costs with respect to Lockheed Martin's applications. The applications, though filed almost five years ago in response to a Commission public notice, have yet even to be accepted for filing. Petitions and comments have not been taken, and no Commission resources have been expended directly on these applications. A refund under these circumstances is clearly appropriate. In addition, during the last half decade while Lockheed Martin's applications languished untouched, the world into which they were filed has changed dramatically. The spectrum Lockheed Martin applied for will not be available for its use as a result of two domestic proceedings and actions taken by two International Telecommunication Union ("ITU") World Radiocommunication Conferences. Moreover, the international implementation deadlines for bringing the frequency assignments sought by Lockheed Martin into use are now so close that even if a grant were to occur tomorrow, Lockheed Martin would not be able to get all nine satellites established in time to avoid a potentially devastating loss of international recognition and protection. Under a Commission rule adopted after Lockheed Martin filed its application, the inability to meet the deadline in the ITU's Radio Regulations for bringing the V-band frequency assignments at the slots sought by Lockheed Martin into use would ultimately result in the cancellation of any license that were to issue. Together, these

latter circumstances bring Lockheed Martin under the operation of the Commisison rule that states that a refund is warranted in circumstances where the Commission adopts new rules that nullify applications already accepted for filing, or a new law or treaty would render useless a grant or other positive disposition of the application. Lockheed Martin's arguments are presented in detail below.

Lockheed Martin filed its V-band applications on September 25, 1997.[1] Since then, the Commission has adopted a series of decisions and proposed decisions regarding spectrum allocation and use in the V-band that would preclude the grant of Lockheed Martin's applications as filed. The spectrum designated in a 1998 Commission Report and Order for non-government satellite use in the 36-51.4 GHz range is substantially less than the amount of spectrum Lockheed Martin requested in its 1997 applications.[2] Last year, following global spectrum allocation and use decisions by the ITU's 2000 World Radiocommunication Conference ("WRC") – which have the effect of a treaty – the Commission proposed radically to modify its 1998 V-band spectrum plans. However, this proposed new plan, which remains pending, is still grossly inconsistent with what Lockheed Martin sought in its 1997 applications.[3] In other words, before they could be granted, Lockheed Martin's applications would have to be modified in ways that, under Section 25.116 of the Commission's rules, would ordinarily be treated as "major amendments." *See* 47 C.F.R. § 25.116(b)(1) (an amendment will be deemed a major amendment if it increases the potential for interference, or changes the proposed frequencies or orbital locations to be used).

Additionally, ITU regulations regarding the bringing into use of frequency assignments to satellite networks, and the interrelationship of these regulations with the Commission's rules have ramifications that could effectively render nugatory any future grant of Lockheed Martin's nine V-band applications. In early November 1997, the U.S. filed Advance Publication Information for V-band frequency assignments at a number of orbital locations around the world to accommodate the requirements of Lockheed Martin and the other applicants in the V-band application processing round that was established in September 1997. Under ITU Radio Regulations, frequency assignments for satellite systems for which Advance Publication information was initially submitted prior to November 22, 1997 must be brought into use no later

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1 FCC File Nos. SAT-LOA-19970925-00100 through 00108. The applications were filed in response to Commission Public Notices soliciting applications and establishing the first V-band satellite application processing round. *See* Public Notices, Cut-off Established for Additional Space Station Applications and Letters of Intent in the 36 to 51.4 GHz Frequency Band, DA 97-1551 (released July 22, 1997) and Clarifications and Corrections to Public Notice Report Nos. SPB-88 and SPB-89, DA 97-1723 (released Aug. 13, 1997).

2 *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands*, Report and Order, 13 FCC Rcd 24649 (1998) (*"36-51 GHz Order"*). For example, where Lockheed Martin requested the 39.5-42.5 GHz bands for its GSO downlink operations, the Commission designated only the 37.6-38.6 GHz and 40-41 GHz bands for such uses. The Commission also deferred decisions on sharing between GSO and non-geostationary ("non-GSO") systems within those bands to as-yet uninitiated future proceedings. *Id.* at ¶ 21.

3 *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands*, Further Notice of Proposed Rulemaking, IB Docket No. 97-95, FCC 01-182 (released May 31, 2001). Under the new proposal, satellite downlinks would be designated only in the 40-42 GHz band, *id.* slip op. at 33, and GSO/non-GSO sharing issues would presumably again be deferred.

than November 2006.[4] Failure to bring the assignments into use by the deadline would lead to cancellation of the assignments by the ITU. While such assignments may be re-filed as new assignments, the U.S. would have to coordinate such new filings with the hundreds of post-1997 filings that have been made with the ITU for V-band satellite systems – a daunting prospect for successful system implementation. Domestically, as the Commission now routinely correlates the milestone deadline for full system implementation with the ITU deadline for bringing frequency assignments into use,[5] any grant to Lockheed Martin today would give the company only four years at most to construct, launch and begin operating nine satellites. As Lockheed Martin's applications, and many of the other applications that comprise the first V-band processing round, have yet even to be accepted for filing, grant is likely at least two years away. A Fall 2004 grant would mean that Lockheed Martin would have no more than two years within which to accomplish the virtually impossible task of planning, constructing, launching, and placing into operation nine geostationary satellites. The consequence for failure is severe: Lockheed Martin would have its licenses declared null and void and any associated U.S. ITU filings cancelled.

Section 1.1113 of the Commission's rules, 47 C.F.R. § 1.1113, sets out the circumstances under which the return or refund of filing fees is appropriate. In pertinent part, a refund is appropriate when "the Commission adopts new rules that nullify applications already accepted for filing, or [a] new law or treaty would render useless a grant or other positive disposition of the application." 47 C.F.R. § 1.1113(a)(4). The Commission has explained that Section 1.1113(a)(4) is intended to apply in cases where "action of a government entity would make the requested action impossible without regard to the merits of the application." *Establishment of a Fee Collection Program*, 2 FCC Rcd 947, 950 (1987) ("*Fee Collection Order*"). Lockheed Martin submits that the domestic and international decisions regarding spectrum use by non-government V-band satellites that have been taken and/or proposed since Lockheed Martin filed its applications in 1997 have nullified its applications as filed, and justify a refund of the associated filing fees. The prospective adoption for V-band of a rule similar to Section 25.145(f) that keys the final milestone for Lockheed Martin's system authorization to the 2006 ITU "bringing into use" deadline would have additional nullifying effect on a company that proposed to establish a nine-satellite worldwide system. These decisions and actions are entirely beyond Lockheed Martin's control.

In cases addressing the scope of its refund standard, the Commission has made clear that when significant rule changes affect the entry criteria applicable to an applicant, that applicant will be afforded the opportunity to request a refund of its application filing fee.[6] In the *Private*

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[4] ITU Radio Regulation Nos. 11.44 and 11.48.

[5] *See, e.g.*, 47 C.F.R. § 25.145(f) ("Each GSO FSS licensee in the 20/30 GHz band will be required ... to launch the remainder of its satellites by the date required by the International Telecommunications [sic] Union to assure international recognition and protection of those satellites"). This rule was adopted in October 1997, *after* Lockheed Martin filed its applications. It is reasonable to anticipate that the Commission would apply a similar provision to V-band satellite networks when it develops service rules for such networks.

[6] *See, e.g., Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444, 1449 at n.49 (1993); *Amendment of Part 90 of the Commission's Rules to Provide for*

Land Mobile Order, for example, the Commission upheld a series of rule changes that "significantly altered" the entry criteria for non-commercial nationwide 220-222 MHz licensees.[7] In light of these changes, the Commission determined that an applicant should be permitted an opportunity to amend its application in response to the new rules or, in the event that an applicant instead withdrew its application, to obtain a refund of its application filing fee.[8]

Like the *Private Land Mobile Order* applicants, Lockheed Martin does not wish to amend its applications to reflect the dramatically smaller amount of spectrum that would be available to it either under the *36-51 GHz Order* or the proposed post-WRC-2000 plan. It should, therefore, be found entitled to a full refund of its application filing fees in conjunction with the withdrawal of its V-band applications.

Grant of the instant refund request is particularly justified on the grounds that the Commission, in the nearly five years since Lockheed Martin filed its applications, has not yet taken any action with regard to them. Lockheed Martin's applications have been pending since September 1997, along with applications from up to twelve other entities that formed the V-band satellite application processing round, without having been accepted for filing. Petitions to deny and comments have not been taken, and no processing other than the assignment of file numbers – an automatic action under Section 25.150 of the Commission's rules, 47 C.F.R. § 25.150 – appears to have been undertaken. In other words, the Commission has incurred no costs associated with processing the V-band applications.[9]

It is axiomatic that application fees are intended to recover the costs associated with processing applications. *See FCC Collection Order* at 948 ("We wish to emphasize at the outset that the very core of [the fee collection] effort is to reimburse the government – and the general public – for the regulatory services provide to certain members of the public."). Thus, the extent to which the Commission processes an application has a direct bearing on whether an application refund is warranted. The Commission applied this principle recently when it distinguished refund requests of applicants for Multiple Address Systems ("MAS") from those of applicants for Cellular Radiotelephone in six Rural Service Areas. The Commission allowed refunds to the MAS applicants because their applications "were accepted for filing but not processed further." *Certain Cellular Rural Service Area Applications*, 14 FCC Rcd 4619, 4621 at n.14 (WTB 1999). In contrast, it denied the refund request of the Cellular Radiotelephone applicants on the grounds

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the Use of the 220-222 MHz Band by the Private Land Mobile Service, 8 FCC Rcd 4161, 4164 at n.28 (1993) ("*Private Land Mobile Order*").

7 8 FCC Rcd at 4162.

8 *Id.* at 4162, 4164 at n.28.

9 Shortly after the applications were filed, the applicants jointly met to prepare first the ITU Advance Publication Information for a sufficient number of geostationary orbital locations to accommodate the processing group, and subsequently to prepare the coordination information for those slots. The applicants undertook the burden and expense of preparing these ITU filings. The ITU filings are not earmarked for any specific applicant at this point, and any filings for slots initially sought by Lockheed Martin remain available for their duration as U.S. filings that may be used by any of the other applicants or possible future applicants, consistent with FCC practice.

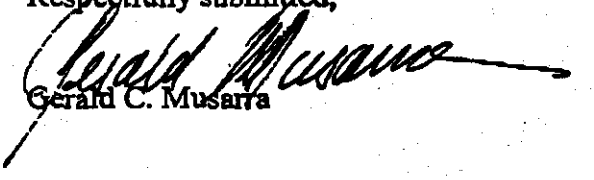
that, in addition to having their applications accepted for filing, they had participated in initial lotteries for their respective markets. *Id.* at 4621. The absence of lottery participation, and the administrative expenses associated with such participation, justified granting the MAS applicants the relief that they sought.

Significantly, Lockheed Martin has an even more compelling case for refund than the MAS applicants. While the MAS applications "were accepted for filing but not processed further," *id.* at n.14, the Lockheed Martin applications, as noted above, have not yet even been accepted for filing. Thus, the Commission has not incurred even the modest processing fees associated with that most preliminary of agency actions. There can be no justification for not granting a request to refund a filing fee paid expressly to process applications – especially a fee that runs to the hundreds of thousands of dollars – where the set of applications have not even begun to have been acted upon.

Finally, important public policy considerations support grant of the instant refund request. As noted above, none of the V-band applications filed by Lockheed Martin or any of the other applicants has yet been accepted for filing by the Commission. Permitting Lockheed Martin to obtain a filing fee refund would remove one potentially conflicting request for the use of valuable orbital and spectrum resources, and facilitate the ultimate resolution of the remaining applicants. This result would have considerable value in the V-band context, particularly in light of the looming ITU deadlines for bringing frequency assignments at V-band into use and the expected inclusion of these deadlines in the milestone schedules the Commission is likely to establish when it ultimately acts upon the pending applications. Naturally, the fewer applications there are for the Commission to address and resolve, the more rapidly it can issue licenses and allow the applicants to move forward This, in turn, benefits the public interest by facilitating the deployment of new services.

For the foregoing reasons, Lockheed Martin requests a prompt refund of the $765,405 in application fees it tendered in connection with its above-referenced V-band applications. Should there be any questions concerning this request, please contact the undersigned.

Respectfully submitted,



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Enclosure